IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3607 OF 1990

Shri Dinkarrao Shankarrao Pawar, deceased through L.H.

1A. Smt.Vatsalabai Dinkar Pawar & Ors. : Petitioners (Landlords)

V/s.

Shri Kushaba Bala Beldar & Ors. : Respondents (Tenants)

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Mr.P.B.Shah for the petitioner nos.1A & 1B.

Mr.K.B.Sonwalkar for the respondent nos.1-a to 1-f, 2-b to 2-e.

Mr.R.R. Bhosale for the respondent nos.3 to 6.

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CORAM : S.A. BOBDE, J.

June 14, 2005.

P.C.:

1. The petitioners are landlords of agricultural lands bearing various survey numbers. In the land bearing survey no.3, situate at village Sarade, originally there were six tenants i.e. Kushaba Bala Beldar, Martand Bala Beldar, Govind Bala Beldar, Madhav Nivrutti Beldar,

Sadashiv Marati Beldar and Bhagwan Appaji Beldar. Proceedings were initiated by the tenants. The present respondents are the heirs and legal representatives of the original tenants. Proceedings were initiated in respect of the tenancy of the petitioners-landlords for possession of the suit land under section 31 of the Bombay Tenancy and Agricultural Lands Act, 1949, hereinafter referred to as the "Act", against the respondent nos.1 and 2 i.e. Kushaba Bala Beldar and Govind Bala Beldar. These proceedings have admittedly been dismissed.

2. The tenants also instituted proceedings inter se under section 17(b). The first round of litigation arising out of the proceedings initiated by the tenants culminated in the order of the Maharashtra Revenue Tribunal dated 13.7.1977. The Maharashtra Revenue Tribunal held that the tiller’s day in respect of Kushaba and Govind was 1.11.1969 by virtue of section 31C of the Act. As regards the others i.e. Martand, Madhav, Sadashiv and Bhagwan, the Maharashtra Revenue Tribunal held that the tiller’s day was 1.4.1957. The Maharashtra Revenue Tribunal, therefore, remanded the matter to the trial Court for an inquiry into the holding of each tenant as it stood on the tiller’s day applicable in his case. However, after the remand, as is obvious from a plain

reading of all the orders, the authorities have determined the extent of the right to purchase on the basis that the tiller's day of all the tenants was 1.4.1957. This error is apparent on the face of the order of the Additional Tahsildar and A.L.T., Phaltan, dated 11.9.1981; the S.D.O., Phaltan, dated 1.4.1985; and the Maharashtra Revenue Tribunal, Pune, dated 6.6.1989. Besides, all the authorities below have computed the extent of the right to purchase on the basis that the other tenants i.e. Martand, Madhav, Sadashiv and Bhagwan held the land as individual tenants.

3. Mr.Shah, the learned counsel for the petitioners, has challenged the impugned order principally on two grounds. Firstly, according to the learned counsel, the Maharashtra Revenue Tribunal had held the tiller's day in respect of Kushaba and Govind to be 1.11.1969. According to the learned counsel, therefore, the impugned orders are clearly vitiated on account of the fact that in respect of Martand, Madhav, Sadashiv and Bhagwan, the tiller's day was held to be 1.4.1957. The question is what difference does it make? According to the learned counsel for the petitioners, the petitioners have produced evidence to show that Kushaba and Govind had more land in 1969 than in 1957 and, therefore, the extent of land they could hold

was liable to be curtailed, if the tiller's day is taken as 1.11.1969. It appears that none of the authorities have applied their mind to the area held by Kushaba and Govind on 1.11.1969.

4. In the circumstances, the impugned order in regard to these two persons, and now their heirs, is vitiated. I, therefore, consider it appropriate to direct the S.D.O., Phaltan, to ascertain the holding of Kushaba Beldar and Govind Beldar as on 1.11.1969 and thereupon permit the land to be purchased by the heirs of the two aforesaid tenants, in accordance with law.

5. Secondly, Mr.Shah, learned counsel for the petitioners, contended that the impugned orders are vitiated on the ground that the authorities below have computed the holding of the respondents-tenants Martand, Madhav and Bhagwan as if they ware individual tenants. This, according to the learned counsel, is contrary to the earlier finding confirmed by this Court in Special Civil Application no.1334 of 1965 decided on 24.8.1967 by Tarkunde, J. It appears that the Maharashtra Revenue Tribunal has also observed that the High Court finally decided that Kushaba Bala, his brothers and nephews were all the co-tenants in the suit land, vide para 7 of the

impugned order. Yet it appears vide para 9 that the Maharashtra Revenue Tribunal has upheld the finding that these tenants were cultivating the land in their individual capacity as tenants and this fact was finally decided by the Tribunal. This is an obvious error apparent on the face of the order of the Maharashtra Revenue Tribunal and vitiates the order. Therefore, I consider it appropriate, in the interests of justice, to remand the matter to the Sub-Divisional Office, Phaltan, to decide the holding of the respondents-tenants on the basis that they were co-tenants and not individual tenants, since nothing is pointed out to controvert the earlier finding of the High Court in the aforesaid Special Civil Application decided in the year 1967. The S.D.O. is directed to dispose of the matter as early as possible and, in any case, not later than three months from the date the parties appear before him. The parties are directed to appear before the Sub-Divisional Officer on 11.7.2005.

6. The rule is made absolute in the aforesaid terms.

S.A. BOBDE, J.